

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIC COHEN,
and TOMAS BRODSKY

MAILED

AUG 11 2006

PAT & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Application No. 09/703,419

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on August 8, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

December 14, 2005, appellants filed an Appeal Brief. A review of the file reveals that the Summary of Claimed Subject Matter does not map the claimed

invention to the independent claims as set forth in 37 CFR§ 41.37(c)(1)(v) which states:

(v) ***Summary of claimed subject matter.*** A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

On March 7, 2006, an Examiner's Answer was entered into the record. In the Evidence Relied Upon section page 3 paragraph 8, the examiner relied on the following references:

4,864,409	Platte et al.	9-1989
6,556,235	Saburi	4-2003

A review of the file reveals that references Platte et al. (U.S. Patent No. 4,864,409) in view of Saburi (U.S. Patent No. 6,556,235) and further in view of Vincent (U.S. Patent 6,195,122) were used in the rejection of claims 11 and 10, as stated in the Grounds of Rejection, paragraph (9) of the examiner's answer. The Manual of Patent Examining Procedure in § 1207.02 states:

(8) Evidence Relied Upon. A listing of the evidence relied on (e.g. patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

The examiner must submit a correct examiner's answer that will include in the Evidence Relied Upon section, the list of all references used in the rejections on appeal. Appropriate correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

1) hold the Appeal Brief of December 14, 2005 defective;

2) request applicants to file a substitute Appeal Brief in compliance with 37 CFR

§ 41.37;

3) for the examiner to consider the substitute Appeal Brief;

4) vacate the Examiner's Answer mailed March 7, 2006, and issue a

revised Examiner's Answer having the missing reference listed under the

Evidence Relied Upon, paragraph (8);

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- 5) have a complete copy of the substitute Appeal Brief and any subsequent Examiner's Answer scanned into the record; and
- 6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:



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